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14 Attorneys for Defendant

15 **UNITED STATES DISTRICT COURT**  
16 **DISTRICT OF ARIZONA**

17 United States of America,  
18 Plaintiff/Respondent,  
19 v.  
20 Abdul Malik Abdul Kareem,  
21 Defendant/Movant.

2:15-cr-00707-SRB

**ABDUL MALIK ABDUL  
KAREEM'S EX PARTE REQUEST  
FOR ISSUANCE OF SUBPOENA**

22 Defendant, Abdul Malik Abdul Kareem ("Kareem"), moves this Court, pursuant  
23 to Fed. R. Crim. P. 17(b) to issue a subpoena calling for Assistant United States Attorney  
24 Joseph Koehler ("AUSA Koehler") to appear and give testimony at the evidentiary  
25 hearing in this case set for 9:00 am on October 15, 2019, in Courtroom 502, of the Sandra  
26 Day O'Connor U.S. Courthouse, 401 West Washington Street, Phoenix, AZ 85003.

1 Defendant is indigent, having been found so by the Court on June 11, 2015 and  
2 has remained so ever since. Docket Report, minute entry. He is unable to pay the witness  
3 fees necessary to procure the witness's attendance.

4 The witness's presence is necessary for an adequate defense. This Court set the  
5 evidentiary hearing to explore the circumstances surrounding his first learning of the  
6 existence of a pole camera placed outside the apartment of Elton Simpson and Nadir  
7 Soofi by the FBI in April or May of 2015 to surveil 13850 N. 19<sup>th</sup> Avenue, #219, Phoenix,  
8 Arizona, how he came to learn of it and why he was not aware of its existence prior to  
9 the trial of Kareem in the Spring of 2016. Here are excerpts from the Court's oral  
10 pronouncements at an August 9, 2019 telephonic conference:  
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13 THE COURT: I scheduled this telephonic conference in order to set an  
14 evidentiary hearing. I have reviewed the pending motion and supplemental  
15 briefing on the new trial, and I believe that an evidentiary hearing is appropriate,  
16 limited to the circumstances surrounding the pole camera footage that was just  
17 disclosed fairly recently.  
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19

20 \* \* \*

21 I think that it's important for me to know the facts and circumstances around  
22 the authorization for the pole camera, the lack of disclosure of why -- of the pole  
23 camera's existence.  
24

25 \* \* \*

1 Obviously I'm concerned about the lack of disclosure of the pole camera  
2 footage, and I need to know and want to know more about that at an evidentiary  
3 hearing.

4 Counsel believes that AUSA Koehler was in charge of prosecuting the above-  
5 captioned case and was in charge or responsible for gathering all of the information that  
6 would be used in the prosecution of Kareem and for obtaining all of the information and  
7 material that would be turned over to Kareem's defense team. Based upon information  
8 disclosed by AUSA Koehler at a recent meeting with defense lawyers Dan Drake and  
9 Dan Maynard, it appears that the FBI uses a different method of assigning case agents in  
10 terrorism cases. For example, upon information and belief, an FBI "case" agent was  
11 assigned to Elton Simpson, a different agent to Kareem, a different agent to Saabir Nurse  
12 and a different agent to Mr. Wahid. It would seem that much of their work or  
13 investigation was involving many of the same people and evidence and there is a question  
14 as to whether this is done so FBI agents have plausible deniability about what other agents  
15 are doing. Even more importantly how do these agents communicate with the Assistant  
16 United States Attorneys regarding materials appropriate for disclosure and use at trial in  
17 the various trials and investigations of alleged terrorists. AUSA Koehler's testimony is  
18 necessary, relevant and material to understand who he communicated with at the FBI to  
19 obtain material for Kareem's trial and why he did not learn of certain material information  
20 until after Kareem's trial. For example, what did he ask Agent Whitson to obtain and  
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1 provide to him and when did he become aware that other FBI agents were handling  
2 independent investigations of various witnesses or potential witnesses in the Kareem  
3 case, and did he communicate with them as well. If the Government takes a position that  
4 Kareem's case agent ("Whitson") did not know about the pole camera because it was in  
5 the realm of the FBI case agent for Simpson, it is relevant to determine what steps, if any,  
6 AUSA Koehler took to gather information in this case and that can only come from  
7 AUSA Koehler or AUSA Brooks.

8  
9 AUSA Koehler's testimony would establish the procedures and methods used by  
10 AUSAs in terrorism cases, how they access files and information and learn about  
11 potential witnesses. AUSA Koehler's testimony about the general procedures he utilized  
12 would help to explain why he did not know about the pole camera for over three years,  
13 why he was not aware that an FBI agent viewed the Garland shooting until over a year  
14 after the event, why he was not aware of the investigation by the FBI of Saabir Nurse or  
15 that an individual in Florida admitted to being involved in the Garland attack and the  
16 Government prepared a plea agreement using that individual's statement concerning his  
17 involvement in the Garland attack as a factual basis for his guilty plea. All of this is  
18 relevant and material to understanding how the existence of the pole camera and video  
19 files might have been overlooked or purposely suppressed by the Government.

20  
21 Excludable delay under 18 U.S.C. § 3161 will not occur as a result of this motion  
22 or a ruling thereon.

1  
2 RESPECTFULLY SUBMITTED this 27<sup>th</sup> day of September 2019.

3 **MAYNARD CRONIN ERICKSON**  
4 **CURRAN & REITER, P.L.C.**

**DRAKE LAW, PLC**

5 /s/Daniel D. Maynard  
6 DANIEL D. MAYNARD

/s/Daniel R. Drake  
DANIEL R. DRAKE

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8  
9 **CERTIFICATE OF SERVICE**

10 I hereby certify that on September 27, 2019, I electronically transmitted the  
11 attached document to the Clerk's Office using the CM/ECF System for filing and  
12 transmittal of a Notice of Electronic Filing to CM/ECF registrants:  
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14

15 /s/Stacey McClellan  
16 Stacey McClellan  
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